

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 13, 16, 19 and 22 are requested to be cancelled.

Claims 14, 17, 20 and 23 are currently being amended.

This amendment changes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

After amending the claims as set forth above, claims 14, 15, 17, 18, 20, 21, 23 and 24 are now pending in this application.

IDS

The Office Action asserts that the IDS filed on March 30, 2007, fails to comply with CFR 1.98(a)(2). Applicants respectfully disagree. According to PAIR, legible copies of foreign references JP 2004-252975 and JP 7-093262 were submitted with the IDS filed on March 30, 2007. JP 3472540 was previously submitted with the IDS filed on June 19, 2006. Accordingly, Applicants submit that the IDS filed on March 30, 2007, complies with CFR 1.98(a)(2). In order to expedite prosecution, courtesy copies of foreign references JP 2004-252975, JP 7-093262 and JP 3472540 are attached to this response.

Claim Objections

Claims 13, 14, 16, 17, 20 and 23 were objected to for informalities. In response, Applicants have amended claims 14, 17, 20 and 23 to correct the informalities. Claims 13 and 16 have been cancelled. Accordingly, Applicants request that the objections be withdrawn.

Claim Rejections under 35 U.S.C. § 112

Claims 14, 15, 17, 18, 20, 21 and 22-24 are rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. Claims 13-15 and

17-24 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In response, Applicants have amended claims 14, 17, 20 and 23. Accordingly, Applicants request that the rejection be withdrawn and claims 14, 15, 17, 18, 20, 21, 23 and 24 be allowed.

Claim Rejections under 35 U.S.C. § 101

Claims 16-18 were rejected under 35 U.S.C. § 101 for allegedly being directed to non-statutory subject matter. Applicants note that in a recent court decision, the Federal Circuit noted that “[t]he Supreme Court has articulated only three exceptions to the Patent Act’s broad patent-eligibility principles: “laws of nature, physical phenomena, and abstract ideas.” Here, claims 16-18 do not claim laws of nature, physical phenomena, or abstract ideas nor has the Examiner asserted as much. Thus, under the recent decision in *Research Corp. v. Microsoft Corp.*, claims 16-18 must be directed to statutory subject matter. However, in order to expedite prosecution, Applicants have amended claim 17 to recite a “processor.” Claim 16 has been cancelled. Accordingly, Applicants request that the rejection be withdrawn and claims 17 and 18 be allowed.

Claim Rejections under 35 U.S.C. § 103(a)

Claims 13, 16, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitkin et al. (US 5,341,477; hereinafter Pitkin). Claims 14, 15, 17, 18, 20, 21 and 23-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pitkin in view of Deng et al. (US 2001/0039581; hereinafter Deng). In response, without agreeing or acquiescing to the rejection, Applicants have cancelled claims 13, 16, 19 and 22 and rewritten claims 14, 17, 20 and 23 in independent form and amended claims 14, 17, 20 and 23 to include the limitations of 13, 16, 19 and 22, respectively. Further, Applicants respectfully traverse the rejection for at least the reasons set forth below.

Applicants rely on MPEP § 2143.03, which requires that all words in a claim must be considered in judging the patentability of that claim against the prior art. Here, the cited

references do not identically disclose, teach or suggest all the claim limitations. *See In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Independent claim 14 is directed to a “server/client system” comprising, in addition to other elements, “a first calculating unit configured to calculate, for each of the servers, a first distance from an estimation point indicating an estimated consumption to an ideal consumption line, the estimated consumption obtained by adding an amount of resource to be consumed by execution of the process to a point indicating a current resource consumption for each of the servers, the ideal consumption line being a straight line that connects an origin and a point indicating a maximum resource capacity for each of the servers expressed in a space having parameters of resource as axes.” Independent claims 17, 20 and 22 recite similar limitations.

In contrast, the cited references do not disclose, teach or suggest each and every element recited in independent claims 14, 17, 20 and 22.

The Office Action acknowledges that Ptikin fails to disclose “a first calculating unit” as claimed in claim 14. *See* Office Action at p. 10. To cure the deficiencies of Pitkin, the Office Action relies on Deng. This contention is respectfully traversed.

In particular, it is submitted that secondary citation to Deng does not remedy the conceded deficiency in the primary citation to Pitkin. Accordingly, without conceding the propriety of the asserted combination, the asserted combination of Pitkin and Deng is likewise deficient, even in view of the knowledge of one of ordinary skill in the art.

Deng is directed to a system for balancing distribution of requests across multiple servers. Paragraph [0030] of Deng states, “[t]he metrics associated with each request forms a requirement vector (116) whose elements represent the requirement level of each of the parameters used in the decision process. The metrics associated with the ability of a particular server (104) to satisfy the request (102) is referred to as a capacity vector (136).” Deng also states at paragraph 0031, that “[a] decision-making algorithm then selects a resource for each request so that the sum of all the costs in the matrix is minimized for all combinations of requests and resources.”

However, the differences between independent claims 14, 17, 20 and 22 and Deng are described below. In the explanation below, V_{ri} denotes a requirement vector and V_{cj} denotes a capability vector ($i, j = 1, 2, 3, \dots$).

Specifically, Deng does not disclose an “ideal consumption line” as claimed in claim 14. The capability vector V_{cj} will indicate a current state of a server j because V_{cj} is compared with a requirement. Thus, two vectors V_{cj} and V_{ri} cannot express the ideal consumption line. That is, if V_{cj} were to correspond to the ideal consumption line, there would be no index or vector or whatsoever that expresses the current state of a server in Deng.

In addition, the vector space distance between V_{cj} and V_{ri} does not correspond to the “first distance” of claim 14. First, as set forth above, Deng does not disclose the ideal consumption line. Secondly, the vector space distance $\| V_{ri} - V_{cj} \|$ is not equal to “a first distance from an estimation point indicating an estimated consumption to an ideal consumption line.” Instead, these are different concepts. Deng tries to minimize the sum $\sum a_{ij} = \| V_{ri} - V_{cj} \|$. However, even if $\sum a_{ij}$ is minimized, it does not mean that each resource or a server is consumed equally.

When determining whether a claim is obvious, an examiner must make “a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art.” *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, “obviousness requires a suggestion of all limitations in a claim.” *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (*citing In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). Here, the cited references fail to disclose each and every limitation in as complete detail as is contained in independent claims 14, 17, 20 and 22.

Claims 15, 18, 21, 23 and 24 depend from one of independent claims 14, 17, 20 or 22 and should be allowed for at least the reasons set forth above without regard to further patentable limitations contained therein.

If this rejection of the claims is maintained, the examiner is respectfully requested to point out where the above-mentioned features are disclosed in the cited references.

Conclusion

Applicants believe that the present application is now in condition for allowance.
Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. §1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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